

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x
THOMAS GESUALDI, LOUIS BISIGNANO, :
MICHAEL O'TOOLE, MICHAEL C. BOURGAL, :
DARIN JEFFERS, JOSEPH A. FERRARA, SR., :
FRANK H. FINKEL, MARC HERBST, THOMAS :
F. CORBETT, and ROBERT G. WESSELS, as : Case No.
Trustees and Fiduciaries of the Local 282 Welfare : 1:21-cv-01833-AMD-MMH
Trust Fund, the Local 282 Pension Trust Fund, the :
Local 282 Annuity Trust Fund, and the Local 282 Job :
Training Trust Fund, :
Plaintiffs, :
- against - :
RIZZO ASSOCIATES, INC., :
Defendant. :
-----x

PLAINTIFFS' STATEMENT OF UNDISPUTED MATERIAL FACTS

Pursuant to Rule 56.1 of the Local Rules of the United States District Courts for the Southern and Eastern Districts of New York, plaintiffs, the Trustees and fiduciaries of the Local 282 Welfare Trust Fund, the Local 282 Pension Trust Fund, the Local 282 Annuity Trust Fund, the Local 282 Job Training Trust Fund, and the Local 282 Vacation and Sick Leave Trust Fund (collectively, the “Funds”), respectfully submit the following statement of undisputed material facts in support of their motion for summary judgment.

The Funds

1. The Funds are maintained pursuant to Restated Agreements and Declarations of Trust (the “Trust Agreement”) for the purposes of collecting and receiving contributions from employers and providing benefits to eligible participants. Declaration of Joseph Puccio (“Puccio Decl.”) ¶ __ & Ex. __ (Trust Agreement).

2. The Funds are jointly administered by a Board of Trustees, comprised of an equal number of labor and management representatives. Puccio Decl. ¶ __.

Rizzo Associates, Inc.

3. Michelle DeLuca is Rizzo Associates, Inc.’s (the Company’s) general manager. Adler Decl. Ex. __ (February 3, 2022 Deposition Transcript of Michelle DeLuca “DeLuca Tr.”) 4:17-20.

4. Ms. DeLuca’s daily tasks include handling “everything,” including payroll. Adler Decl. Ex. __ (DeLuca Tr.) 4:21-5:2.

The Collective Bargaining Agreement, the Trust
Agreement and the Obligation to Contribute to the Funds

5. The Company is bound to the New York City Heavy Construction and Excavation Contract for the period of July 1, 2017 through June 30, 2021 (the “2021 CBA”) and July 1, 2021 through June 30, 2026 (the “2026 CBA,” with the 2021 CBA, the “CBAs”). Puccio Decl. ¶ __ & Ex. __ (2021 CBA); Ex. __ (2026 CBA); Adler Decl. Ex. __ (DeLuca Tr. 5:5-23).

6. The CBAs provide that the Company is bound to the Trust Agreement. Puccio Decl. ¶ __; Ex. __ (2021 CBA), at 21-22; Ex. __ (2026 CBA), at 22.

7. At all times relevant to this action, the CBAs have required the Company to make contributions to the Funds on behalf of its employees who are covered by the CBAs, at specified rates for each hour of covered employment, subject to certain limitations set forth in the CBAs. Puccio Decl. ¶ __; Ex. __ (2021 CBA), at 6, 20-21 Ex. __ (rate sheets); Ex. __ (2026 CBA), at 6, 21-22.

8. The Company acknowledges that it contributes for each hour of covered employment performed by chauffeurs of its trucks. Adler Decl. Ex. __ (DeLuca Tr.) 5:24-6:6.

9. Along with the contributions, the Company is also required to submit remittance reports to the Funds. The remittance reports provide the Company's statement of the employees who performed work covered by the CBAs and the number of hours each such employee worked in covered employment. Puccio Decl. ¶ __ & Ex. A (Trust Agreement), at 25.

10. Pursuant to the CBAs, the remittance reports and contribution payments are due forty-five (45) days after the close of the applicable calendar month for which covered work was performed. Puccio Decl. ¶ __ & Ex. __ (2021 CBA), at 21; Ex. __ (2026 CBA), at 22.

11. Through Michele DeLuca, the Company reports to the Funds hours worked by covered Company employees. Adler Decl. Ex. __ (DeLuca Tr.) 6:4-6.

12. The Company currently submits remittance reports through the Funds' online portal. Puccio Decl. ¶ __; Ex. __ (remittance reports for October 2019 through November 2021); Adler Decl. Ex. __ (DeLuca Tr.) 6:7-11.

13. The Trust Agreement provides that an Employer who fails to submit the required remittance reports within twenty days of written demand must pay an increased monthly contribution, which is computed by first adding 10% to the number of hours for the month in which the largest number of hours were reported in the previous twelve (12) months or fifty two (52) weeks (or any combination thereof) worth of remittance reports submitted by the Company that reflect at least one hour of covered work performed. Once a total number of covered hours is arrived at by the above-described method, it is then multiplied by the then-current contribution rates to arrive at the Company's liability for monthly contributions. Puccio Decl. ¶ __ & Ex. __ (Trust Agreement), at 25-26.

14. To verify the accuracy of the remittance reports submitted by Employers and to determine whether contributions are being made in accordance with the applicable collective

bargaining agreements, the Funds conduct agreed-upon procedures engagements (commonly referred to as “audits”). The Trust Agreement authorizes the Trustees to examine an Employer’s books and records “at any time.” Puccio Decl. ¶ __ & Ex. A (Trust Agreement), at 25.

15. The Trust Agreement requires the following documents be produced for an agreed-upon procedures engagement:

- (a) Payroll records, including payroll journals, time cards, print-outs, ledgers or any other form of payroll record;
- (b) Payroll tax records submitted to federal and state governments, including Forms 941, W-2;
- (c) Complete business income tax returns;
- (d) Cash disbursements records;
- (e) General ledgers;
- (f) Records relating to the hiring of trucks, including equipment vouchers, invoices and payment records; and
- (g) Any other records specifically requested by the Funds’ accountants, including the classification of Employees, their social security numbers, and the amount of wages paid and hours worked.

Puccio Decl. Ex. __ (Trust Agreement), at 25.

The Company's Breakdown of Contributions Due and Paid (October 2019 through November 2021)

16. On or about January 27, 2022, the Company provided the following spreadsheet breakdown of contributions paid and remaining due for the months of October 2019 through November 2021 (the “Spreadsheet”):

Reporting Month	Welfare	Pension	Annuity	Job Training	Vacation/Sick	Heavy Construction	Due Date
Oct-19	\$22,499.39	\$16,497.00	\$20,318.65	\$122.50	\$6,600.00	\$413.10	
Nov-19	\$14,981.87	\$10,985.00	\$12,667.80	\$83.70	\$4,180.00	\$250.80	
Dec-19	\$11,875.92	\$8,707.66	\$10,246.07	\$66.18	\$3,177.50	\$190.65	
Jan-20	\$15,451.70	\$11,329.50	\$13,813.12	\$82.25	\$4,335.00	\$260.10	
Feb-20	\$11,967.76	\$8,775.00	\$10,842.55	\$65.90	\$3,520.00	\$211.20	
Mar-20	\$13,962.38	\$10,237.50	\$12,819.63	\$77.15	\$4,405.00	\$264.30	
Apr-20	\$8,758.62	\$6,422.00	\$7,954.75	\$49.40	\$2,657.50	\$159.45	
May-20	\$9,485.56	\$6,955.00	\$7,961.11	\$52.70	\$2,777.50	\$166.65	
Jun-20	\$12,481.93	\$9,152.00	\$10,786.45	\$70.40	\$3,600.00	\$216.00	
Jul-20	\$10,062.88	\$7,247.50	\$9,533.88	\$54.00	\$2,895.00	\$173.70	
Aug-20	\$11,299.30	\$8,138.00	\$11,238.14	\$60.20	\$3,482.50	\$208.95	
Sep-20	\$10,234.35	\$7,371.00	\$10,312.14	\$55.10	\$3,095.00	\$185.70	
Oct-20	\$15,035.66	\$10,829.00	\$14,826.86	\$80.00	\$4,437.50	\$266.25	12/15/2020
Nov-20	\$12,923.81	\$9,308.00	\$12,488.43	\$68.10	\$3,907.50	\$234.45	1/14/2021
Dec-20	\$13,808.26	\$9,945.00	\$12,492.04	\$73.15	\$3,562.50	\$213.75	2/14/2021
Jan-21	\$9,395.04	\$6,766.50	\$8,319.62	\$52.05	\$2,527.50	\$154.05	3/14/2021
Feb-21	\$8,303.01	\$5,980.00	\$7,952.10	\$46.00	\$2,352.50	\$141.15	4/14/2021
Mar-21	\$7,328.31	\$5,278.00	\$8,290.79	\$44.20	\$2,545.00	\$152.70	5/14/2021
Apr-21	\$8,167.63	\$5,882.50	\$8,582.65	\$45.25	\$2,620.00	\$157.20	6/14/2021
May-21	\$8,673.03	\$6,246.50	\$9,659.98	\$46.45	\$2,940.00	\$176.40	7/14/2021
Jun-21	\$10,857.08	\$7,819.50	\$11,032.77	\$60.15	\$3,257.50	\$195.45	8/14/2021
Jul-21	\$5,924.80	\$4,186.00	\$5,678.45	\$32.20	\$1,617.50	\$97.05	9/14/2021
Aug-21	\$9,324.20	\$6,587.75	\$9,547.29	\$50.53	\$2,793.75	\$167.63	10/15/2021
Sep-21	\$11,417.20	\$8,066.50	\$11,825.73	\$57.25	\$3,322.50	\$199.35	11/14/2021
Oct-21	\$10,856.00	\$7,670.00	\$12,827.15	\$53.45	\$3,552.50	\$213.15	12/15/2021
Nov-21	\$10,653.60	\$7,527.00	\$11,270.63	\$56.55	\$3,195.00	\$191.70	1/14/2022
Dec-21							
Total	\$247,553.49	\$213,909.41	\$283,288.78	\$1,604.81	\$87,356.25	\$5,260.88	\$1,048,900.84
Payments 3/29/21	\$75,810.90	\$7,371.00	\$10,312.14	\$55.10	\$38,347.50	\$185.70	\$132,082.34
Payments 4/7/21	\$15,035.66				\$784.38		\$18,334.94
Payments 7/12/2021	\$15,631.32						
Payments 8/2/2021	\$16,840.66						
Payments 9/17/2021						\$31,270.00	
Payments 12/31/2021	\$15,249.00						
Amount Due	\$108,985.95	\$206,538.41	\$272,976.64	\$765.33	\$17,738.75	\$2,560.28	\$609,565.36

Puccio Decl. Ex __ (Spreadsheet); Adler Decl. Ex __ (DeLuca Tr.) 6:18-22.

17. Fund Office records confirm the accuracy of the Spreadsheet,¹ except that the total remaining Welfare Trust Fund contributions due for October 2019 through November 2021 equaled \$157,161.75 at the time the Spreadsheet was prepared (and due to April 13, 2022

¹ The Heavy Construction listed amounts are paid/due to the Union and not included in this litigation. Puccio Decl. ¶ __.

payments, now equals \$124,234.95) and Annuity Trust Fund contributions were overstated by \$360.00. Puccio Decl. ¶ __.

18. Ms. DeLuca prepared the Spreadsheet. Adler Decl. Ex __ (DeLuca Tr.) 6:21-22.

19. Ms. DeLuca confirmed the inaccuracy of the total Welfare Trust Fund contribution balance, noting that it should read \$157,161.75 remaining due (as of January 27, 2022). Adler Decl. Ex __ (Spreadsheet); Ex. __ (DeLuca Tr.) 6:23-7:18.

20. Ms. DeLuca also explained that the color coding on the Spreadsheet corresponds to the date contribution payments were made. Adler Decl. Ex __ (DeLuca Tr.) 7:19-8:2.

21. Specifically, green relates to contribution payments made on or about March 29, 2021, orange relates to contribution payments made on or about April 7, 2021, light blue relates to contribution payments made on or about July 12, 2021, purple relates to contribution payments made on or about August 2, 2021, grey relates to contribution payments made on or about September 17, 2021, and dark blue relates to contribution payments made on or about December 31, 2021. Puccio Decl. Ex __ (Spreadsheet); Adler Decl. Ex __ (DeLuca Tr.) 7:19-8:2.

22. All contribution amounts listed on the Spreadsheet that are not color coded are contributions that remained due as of January 27, 2022. Puccio Decl. Ex __ (Spreadsheet); Adler Decl. Ex __ (DeLuca Tr.) 8:3-5.

23. The yellow lined summary of amounts lists the contribution amounts remaining due, subject to the error tabulating the Welfare Trust Fund contributions. Puccio Decl. Ex __ (Spreadsheet); Adler Decl. Ex __ (DeLuca Tr.) 8:6-11.

24. The total remaining Welfare Trust Fund contributions due for October 2019 through November 2021 are \$124,234.95. Puccio Decl. ¶ __; Adler Decl. Ex __ (Spreadsheet); Ex. __ (DeLuca Tr.) 6:23-7:18. This amount takes into account payment received on April 13, 2022. Puccio Decl. ¶ __.

25. The total remaining Pension Trust Fund contributions due for October 2019 through November 2021 are \$206,538.41. Puccio Decl. ¶ __; Adler Decl. Ex __ (Spreadsheet).

26. The total remaining Annuity Trust Fund contributions due for October 2019 through November 2021 are \$272,616.64. Puccio Decl. ¶ __; Adler Decl. Ex __ (Spreadsheet).

27. The total remaining Job Training Trust Fund contributions due for October 2019 through November 2021 are \$765.33. Puccio Decl. ¶ __; Adler Decl. Ex __ (Spreadsheet).

28. The total remaining Vacation and Sick Leave Trust Fund contributions due for October 2019 through November 2021 are \$17,738.35. Puccio Decl. ¶ __; Adler Decl. Ex __ (Spreadsheet).

29. Therefore, the total remaining contributions due to the Funds for October 2019 through November 2021 are \$622,254.08. Puccio Decl. ¶ __; Adler Decl. Ex __ (Spreadsheet).

30. Contributions due for May 2020 through November 2021 are subject to audit, which may reflect additional contributions due. Puccio Decl. ¶ __.

Estimated Contributions Due (December 2021 through February 2022)

31. The Company has failed to submit remittance reports for December 2021, January 2022, and February 2022. Puccio Decl. ¶ __.

32. Utilizing the estimating formula, December 2020 is the month in which the largest number of hours were reported in the previous twelve (12) months or fifty-two (52) weeks (or any combination thereof) worth of remittance reports submitted by the Company that reflect at least one hour of covered work performed. Puccio Decl. ¶ __; Ex. __ (remittance reports).

33. The total hours reported in December 2020 were 765.0 for the Welfare Trust Fund, 765.0 for The Pension Trust Fund, 866.75 for the Annuity Trust Fund, 731.5 for the Job Training Trust Fund, and 731.5 for the Vacation and Sick Leave Trust Fund. Puccio Decl. ¶ __; Ex. __ (remittance reports).

34. Consequently, when adding 10% to the December 2020 hours for estimating purposes, for each month of December 2021, January 2022, and February 2022, there are: 841.5 Welfare Trust Fund hours, 841.5 Pension Trust Fund hours, 953.425 Annuity Trust Fund hours, 804.65 Job Training Trust Fund hours, and 783.75 Vacation and Sick Leave Trust Fund hours. Puccio Decl. ¶ __; Ex. __ (remittance reports).

35. Therefore, in total for December 2021 through February 2022, there are 2,524.5 Welfare Trust Fund hours. 2,524.5 Pension Trust Fund hours, 2,860.275 Annuity Trust Fund hours, 2,413.95 Job Training Trust Fund hours, and 2,351.25 Vacation and Sick Leave Trust Fund hours. Puccio Decl. ¶ __; Ex. __ (remittance reports).

36. The applicable hourly contribution rates for December 2021 through February 2022 are: \$18.40 for the Welfare Trust Fund, \$13.00 for the Pension Trust Fund, \$15.0025 for the Annuity Trust Fund, \$0.10 for the Job Training Trust Fund and \$5.00 for the Vacation and Sick Leave Trust Fund. Puccio Decl. Ex. __ (2026) CBA, at 6, 21-22.

37. When multiplying the estimated hours by the applicable contribution rates, for the months of December 2021 through February 2022, a total of \$46,450.80 is due to the Welfare Trust Fund, \$32,818.50 is due to the Pension Trust Fund, \$42,911.27 is due to the Annuity Trust Fund, \$241.40 is due to the Job Training Trust Fund, and \$11,756.25 is due to the Vacation and Sick Leave Trust Fund, for a total of \$133,477.78 due to the Funds for December 2021 through February 2022. Puccio Decl. ¶ ____.

38. Contributions due for December 2021 to date are subject to audit, which may reflect additional contributions due. Puccio Decl. ¶ ____.

March 2018 Audit (Audit #20-0560)

39. Following an examination of the Company's books and records for the period from March 26, 2018 to April 30, 2019, the Trustees' auditor issued an audit report reflecting that the Company owes \$121.65 in contributions. Puccio Decl. ¶ ____; Ex. ____ (Audit #20-0560).

40. To date, the Company has failed to remit payment of the audited deficiency for the period from March 26, 2018 to April 30, 2019. Puccio Decl. ¶ ____.

41. The Company has not submitted proof of payment of the \$121.65 audit delinquency. Puccio Decl. ¶ ____.

Total Contributions Due

42. The total contributions due for October 2019 through February 2022 (subject to audit) equal \$756,553.94. Puccio Decl. ¶ ____.

Damages

43. The Trust Agreement provides that if the Company fails to remit contributions by the date due, the Company is liable to the Funds for (i) the delinquent contributions; (ii) interest at the rate of 1.5% per month (18% per year); (iii) an amount equal to

the greater of (a) interest on the delinquent contributions or (b) liquidated damages of 20 percent of the delinquent contributions; (iv) audit fees; and (v) the Funds' attorney's fees and costs.

Puccio Decl. Ex. __ (Trust Agreement), at 27-28.

44. The CBAs provide that if the Company fails to remit contributions to the Funds when due, the Funds are entitled to the remedies set forth in Section 502(g)(2) of ERISA. Puccio Decl. Ex. __ (2021 CBA), at 21; Ex. __ (2026 CBA), at 22.

Interest

45. Pursuant to the Trust Agreement and Section 502(g)(2) of ERISA, 29 U.S.C. § 1132(g)(2), the Company is required to pay interest on the late-paid and delinquent contributions. The Trust Agreement provides for interest to be calculated at the rate of 1-1/2 percent per month. Puccio Decl. ¶ __ & Ex. A (Trust Agreement), at 27.

46. Accordingly, interest has been calculated at the rate of 1-1/2 percent per month, or eighteen percent (18%) per year. Puccio Decl. ¶ __; Adler Decl. ¶ __.

47. Interest is calculated from the date due. Puccio Decl. ¶ __ & Ex. A (Trust Agreement), at 27 & First Amendment; Adler Decl. ¶ __.

48. Here, interest has been calculated from the date the contributions were due through the date paid, or if unpaid, through April 30, 2022. Adler Decl. ¶ __.

49. Here, interest was determined by (1) taking eighteen percent of the monthly contribution amount, (2) dividing that number by 365 days to determine the per diem (daily) interest rate, and (3) multiplying the daily interest rates by the number of days between the date the contributions were due, and if still unpaid the date the interest calculation was performed (here, April 30, 2022), or if late-paid, the date of payment. Interest is not compounded but instead is simple interest. Adler Decl. ¶ __.

50. For example, interest on unpaid contributions for the month of October 2019 was calculated by (1) multiplying the contribution amount (\$59,315.04) by 18% (0.18), which equals \$10,676.7072, (2) which was then multiplied by the number of days between the due date (December 15, 2019) and April 30, 2022 (a total of 867days), equaling \$9,256,705.14, (3) which was then divided by 365 (days in a year), equaling \$25,360.84 in interest due for unpaid contributions for the month of October 2019. Adler Decl. ¶ __ & Ex. __ (unpaid contributions spreadsheet).

51. The table below details interest calculations on unpaid contributions based on submitted remittance reports (calculated through April 30, 2022):

<i>Referral Period</i>	<i>Total Contributions</i>	<i>Calculation Date</i>	<i>Interest Start Date</i>	<i>Days Late</i>	<i>Interest</i>
10/31/2019	\$59,315.04	4/30/22	12/15/19	867	\$25,360.84
11/30/2019	\$23,652.80	4/30/22	1/14/20	837	\$9,763.10
12/31/2019	\$18,953.73	4/30/22	2/14/20	806	\$7,533.72
1/31/2020	\$25,142.62	4/30/22	3/16/20	775	\$9,609.30
2/29/2020	\$19,617.55	4/30/22	4/14/20	746	\$7,217.11
3/31/2020	\$37,019.51	4/30/22	5/15/20	715	\$13,053.18
4/30/2020	\$23,135.37	4/30/22	6/14/20	685	\$7,815.32
5/31/2020	\$24,401.67	4/30/22	7/15/20	654	\$7,870.04
6/30/2020	\$32,420.38	4/30/22	8/14/20	624	\$9,976.59
7/31/2020	\$26,844.26	4/30/22	9/14/20	593	\$7,850.29
8/31/2020	\$19,376.14	4/30/22	10/15/20	562	\$5,370.11
10/31/2020	\$25,735.86	4/30/22	12/15/20	501	\$6,358.52
11/30/2020	\$34,788.34	4/30/22	1/14/21	471	\$8,080.43
12/31/2020	\$36,318.45	4/30/22	2/14/21	440	\$7,880.61
1/31/2021	\$24,533.21	4/30/22	3/17/21	409	\$4,948.31
2/28/2021	\$13,978.10	4/30/22	4/14/21	381	\$2,626.35
3/31/2021	\$13,612.99	4/30/22	5/15/21	350	\$2,349.64
4/30/2021	\$14,510.40	4/30/22	6/14/21	320	\$2,289.86
5/31/2021	\$15,952.93	4/30/22	7/15/21	289	\$2,273.62
6/30/2021	\$33,027.00	4/30/22	8/14/21	259	\$4,218.41
7/31/2021	\$11,514.15	4/30/22	9/14/21	228	\$1,294.63
8/31/2021	\$18,979.32	4/30/22	10/15/21	197	\$1,843.85
9/30/2021	\$23,271.98	4/30/22	11/14/21	167	\$1,916.59
10/31/2021	\$24,103.10	4/30/22	12/15/21	136	\$1,616.56
11/30/2021	\$22,049.18	4/30/22	1/14/22	106	\$1,152.60
12/30/2021	\$44,726.07	4/30/22	2/13/22	76	\$1,676.31
1/31/2022	\$44,726.07	4/30/22	3/17/22	44	\$970.49

<i>Referral Period</i>	<i>Total Contributions</i>	<i>Calculation Date</i>	<i>Interest Start Date</i>	<i>Days Late</i>	<i>Interest</i>
2/28/2022	\$44,726.07	4/30/22	4/14/22	16	\$352.91
Totals	\$756,432.29				\$163,269.29

Adler Decl. ¶ __ & Ex. __ (late paid contributions spreadsheet).

52. The table below details interest calculations on late-paid contributions based on submitted remittance reports (calculated through April 30, 2022):

<i>Referral Period</i>	<i>Total Contributions</i>	<i>Amount Paid</i>	<i>Date Paid</i>	<i>Interest Start Date</i>	<i>Days Late</i>	<i>Interest</i>
10/31/2019	\$122.50	\$122.50	4/7/21	12/15/19	479	\$28.94
10/31/2019	\$6,600.00	\$6,600.00	3/29/21	12/15/19	470	\$1,438.60
11/30/2019	\$14,981.87	\$14,981.87	3/29/21	1/14/20	440	\$797.93
11/30/2019	\$4,180.00	\$4,180.00	3/29/21	1/14/20	440	\$849.25
12/31/2019	\$11,875.92	\$11,875.92	3/29/21	2/14/20	409	\$450.93
12/31/2019	\$3,177.50	\$3,177.50	3/29/21	2/14/20	409	\$596.99
1/31/2020	\$15,451.70	\$15,451.70	3/29/21	3/16/20	378	\$350.44
1/31/2020	\$4,335.00	\$4,335.00	3/29/21	3/16/20	378	\$748.22
2/29/2020	\$11,967.76	\$11,967.76	3/29/21	4/14/20	349	\$100.29
2/29/2020	\$3,520.00	\$3,520.00	3/29/21	4/14/20	349	\$557.22
3/31/2020	\$4,405.00	\$4,405.00	3/29/21	5/15/20	318	\$629.96
4/30/2020	\$2,657.50	\$2,657.50	3/29/21	6/14/20	288	\$340.72
5/31/2020	\$2,777.50	\$2,777.50	3/29/21	7/15/20	257	\$313.66
6/30/2020	\$3,600.00	\$3,600.00	3/29/21	8/14/20	227	\$353.27
7/31/2020	\$2,895.00	\$2,895.00	9/17/21	9/14/20	368	\$525.38
8/31/2020	\$3,482.50	\$3,482.50	9/17/21	10/15/20	337	\$578.76
8/31/2020	\$11,299.30	\$11,299.30	3/29/21	10/15/20	165	\$919.42
9/30/2020	\$31,067.59	\$31,067.59	3/29/21	11/14/20	135	\$352.31
10/31/2020	\$15,035.66	\$15,035.66	4/7/21	12/15/20	113	\$837.88
10/31/2020	\$4,437.50	\$4,437.50	9/17/21	12/15/20	276	\$603.99
11/30/2020	\$3,907.50	\$3,907.50	9/17/21	1/14/21	246	\$474.04
12/31/2020	\$3,562.50	\$3,562.50	9/17/21	2/14/21	215	\$377.72
1/31/2021	\$2,527.50	\$2,527.50	9/17/21	3/17/21	184	\$229.34
2/28/2021	\$8,303.01	\$8,303.01	7/12/21	4/14/21	89	\$364.42
2/28/2021	\$2,352.50	\$2,352.50	9/17/21	4/14/21	156	\$180.98
3/31/2021	\$7,328.31	\$7,328.31	7/12/21	5/15/21	58	\$209.61
3/31/2021	\$2,545.00	\$2,545.00	9/17/21	5/15/21	125	\$156.88
4/30/2021	\$2,620.00	\$2,620.00	9/17/21	6/14/21	95	\$122.75
4/30/2021	\$8,167.63	\$8,167.63	8/2/21	6/14/21	49	\$197.37
5/31/2021	\$2,940.00	\$2,940.00	9/17/21	7/15/21	64	\$92.79
5/31/2021	\$8,673.03	\$8,673.03	8/2/21	7/15/21	18	\$76.99
7/31/2021	\$5,924.80	\$5,924.80	12/31/21	9/14/21	108	\$315.56
8/31/2021	\$9,324.20	\$9,324.20	12/31/21	10/15/21	77	\$354.06

Referral Period	Total Contributions	Amount Paid	Date Paid	Interest Start Date	Days Late	Interest
9/30/2021	\$11,417.20	\$11,417.20	3/14/22	11/14/21	150	\$844.56
10/31/2021	\$10,856.00	\$10,856.00	3/14/22	12/15/21	119	\$637.08
11/30/2021	\$10,653.60	\$10,653.60	3/14/22	1/14/22	89	\$467.59
Totals	\$258,972.58	\$258,972.58				\$16,475.90

Adler Decl. ¶ __ & Ex. __ (late-paid contributions spreadsheet).

53. The Funds' internal auditing and collections departments calculated interest on the audited contributions at issue through the audit report issue date. Puccio Decl. ¶ __; Ex. __ (Audit #20-0560) (interest pages); Adler Decl. ¶ __.

54. Counsel then calculated interest on interest on the audited contributions at issue from the day following the audit issue date through April 30, 2022. Adler Decl. ¶ __; Ex. __ (Audit #20-0560 calculations).

55. The tables below detail audit contribution interest calculations through April 30, 2022:

Audit #20-0560

FUND	CONTR. OWED	INTEREST Calculated through 9/23/19	POST-AUDIT INTEREST THROUGH 4/30/22	TOTAL INTEREST
Welfare	\$73.58	\$14.69	\$34.44	\$49.13
Pensions	\$55.12	\$11.01	\$25.80	\$36.81
Annuity			\$0.00	\$0.00
Job Training	\$0.45	\$0.02	\$0.21	\$0.23
Vacation/Sick Leave	-\$7.50	\$30.92		\$30.92
GRAND TOTAL	\$121.65			\$117.08

POST-AUDIT INTEREST	CONTR. OWED	INTEREST START DATE	CALCULATION DATE	DAYS LATE	SUBTOTAL
Welfare	\$73.58	9/24/2019	4/30/2022	949	\$34.44
Pension	\$55.12	9/24/2019	4/30/2022	949	\$25.80
Annuity	\$0.00	9/24/2019	4/30/2022	949	\$0.00

POST-AUDIT INTEREST	CONTR. OWED	INTEREST START DATE	CALCULATION DATE	DAYS LATE	SUBTOTAL
Job Training	\$0.45	9/24/2019	4/30/2022	949	\$0.21
Vacation/Sick Leave	-\$7.50	9/24/2019	4/30/2022	949	-\$3.51

Puccio Decl. ¶¶ __ & Ex. __ (Audit #20-0560) (interest pages); Adler Decl. ¶¶ __; Ex. __ (Audit #20-0560 calculations).

Total Interest Due

56. Therefore, the total interest due, calculated through April 30, 2022, is \$179,862.27.

Adler Decl. ¶ __ & Ex. __ (Summary Sheet).

57. In addition, interest on the \$756,553.94 in unpaid contributions continues to accrue at the daily rate of \$373.10, calculated as follows: (a) $\$756,553.94 \times .18 / 365$. Adler Decl. ¶ __.

Liquidated Damages

58. Pursuant to the Trust Agreement and Section 502(g)(2) of ERISA, 29 U.S.C. § 1132(g)(2), the Company is also required to pay liquidated damages in an amount greater than (i) the amount of interest owed, or (ii) 20 percent of the contributions. Puccio Decl. Ex. __ (Trust Agreement), at 27.

59. The table below shows liquidated damages due on unpaid contributions:

Referral Period	Total Contributions	Interest	Liquidated Damages
10/31/2019	\$59,315.04	\$25,360.84	\$25,360.84
11/30/2019	\$23,652.80	\$9,763.10	\$9,763.10
12/31/2019	\$18,953.73	\$7,533.72	\$7,533.72
1/31/2020	\$25,142.62	\$9,609.30	\$9,609.30
2/29/2020	\$19,617.55	\$7,217.11	\$7,217.11
3/31/2020	\$37,019.51	\$13,053.18	\$13,053.18
4/30/2020	\$23,135.37	\$7,815.32	\$7,815.32
5/31/2020	\$24,401.67	\$7,870.04	\$7,870.04

<i>Referral Period</i>	<i>Total Contributions</i>	<i>Interest</i>	<i>Liquidated Damages</i>
6/30/2020	\$32,420.38	\$9,976.59	\$9,976.59
7/31/2020	\$26,844.26	\$7,850.29	\$7,850.29
8/31/2020	\$19,376.14	\$5,370.11	\$5,370.11
10/31/2020	\$25,735.86	\$6,358.52	\$6,358.52
11/30/2020	\$34,788.34	\$8,080.43	\$8,080.43
12/31/2020	\$36,318.45	\$7,880.61	\$7,880.61
1/31/2021	\$24,533.21	\$4,948.31	\$4,948.31
2/28/2021	\$13,978.10	\$2,626.35	\$2,795.62
3/31/2021	\$13,612.99	\$2,349.64	\$2,722.60
4/30/2021	\$14,510.40	\$2,289.86	\$2,902.08
5/31/2021	\$15,952.93	\$2,273.62	\$3,190.59
6/30/2021	\$33,027.00	\$4,218.41	\$6,605.40
7/31/2021	\$11,514.15	\$1,294.63	\$2,302.83
8/31/2021	\$18,979.32	\$1,843.85	\$3,795.86
9/30/2021	\$23,271.98	\$1,916.59	\$4,654.40
10/31/2021	\$24,103.10	\$1,616.56	\$4,820.62
11/30/2021	\$22,049.18	\$1,152.60	\$4,409.84
12/30/2021	\$44,726.07	\$1,676.31	\$8,945.21
1/31/2022	\$44,726.07	\$970.49	\$8,945.21
2/28/2022	\$44,726.07	\$352.91	\$8,945.21
Totals	\$756,432.29	\$163,269.29	\$203,722.94

Adler Decl. ¶ __ & Ex. __ (unpaid contributions spreadsheet).

60. The table below details liquidated damages on late-paid contributions based on submitted remittance reports:

<i>Referral Period</i>	<i>Total Contributions</i>	<i>Interest</i>	<i>Liquidated Damages</i>
10/31/2019	\$122.50	\$28.94	\$28.94
10/31/2019	\$6,600.00	\$1,438.60	\$1,438.60
11/30/2019	\$14,981.87	\$797.93	\$2,996.37
11/30/2019	\$4,180.00	\$849.25	\$849.25
12/31/2019	\$11,875.92	\$450.93	\$2,375.18
12/31/2019	\$3,177.50	\$596.99	\$635.50
1/31/2020	\$15,451.70	\$350.44	\$3,090.34
1/31/2020	\$4,335.00	\$748.22	\$867.00
2/29/2020	\$11,967.76	\$100.29	\$2,393.55
2/29/2020	\$3,520.00	\$557.22	\$704.00
3/31/2020	\$4,405.00	\$629.96	\$881.00
4/30/2020	\$2,657.50	\$340.72	\$531.50
5/31/2020	\$2,777.50	\$313.66	\$555.50
6/30/2020	\$3,600.00	\$353.27	\$720.00
7/31/2020	\$2,895.00	\$525.38	\$579.00

<i>Referral Period</i>	<i>Total Contributions</i>	<i>Interest</i>	<i>Liquidated Damages</i>
8/31/2020	\$3,482.50	\$578.76	\$696.50
8/31/2020	\$11,299.30	\$919.42	\$2,259.86
9/30/2020	\$31,067.59	\$352.31	\$6,213.52
10/31/2020	\$15,035.66	\$837.88	\$3,007.13
10/31/2020	\$4,437.50	\$603.99	\$887.50
11/30/2020	\$3,907.50	\$474.04	\$781.50
12/31/2020	\$3,562.50	\$377.72	\$712.50
1/31/2021	\$2,527.50	\$229.34	\$505.50
2/28/2021	\$8,303.01	\$364.42	\$1,660.60
2/28/2021	\$2,352.50	\$180.98	\$470.50
3/31/2021	\$7,328.31	\$209.61	\$1,465.66
3/31/2021	\$2,545.00	\$156.88	\$509.00
4/30/2021	\$2,620.00	\$122.75	\$524.00
4/30/2021	\$8,167.63	\$197.37	\$1,633.53
5/31/2021	\$2,940.00	\$92.79	\$588.00
5/31/2021	\$8,673.03	\$76.99	\$1,734.61
7/31/2021	\$5,924.80	\$315.56	\$1,184.96
8/31/2021	\$9,324.20	\$354.06	\$1,864.84
9/30/2021	\$11,417.20	\$844.56	\$2,283.44
10/31/2021	\$10,856.00	\$637.08	\$2,171.20
11/30/2021	\$10,653.60	\$467.59	\$2,130.72
Totals	\$258,972.58	\$16,475.90	\$51,930.80

Adler Decl. ¶ __ & Ex. __ (late-paid contributions spreadsheet).

61. The tables below detail liquidated damages on the audited contribution delinquencies:

Audit #20-0560

FUND	CONTR. OWED	TOTAL INTEREST	LIQUIDATED DAMAGES
Welfare	\$73.58	\$49.13	\$49.13
Pensions	\$55.12	\$36.81	\$36.81
Annuity		\$0.00	\$0.00
Job Training	\$0.45	\$0.23	\$0.23
Vacation/Sick Leave	-\$7.50	\$30.92	\$30.92
GRAND TOTAL	\$121.65	\$117.08	\$117.08

Adler Decl. ¶ __; Ex. __ (Audit #20-0560 calculations).

Total Liquidated Damages

62. Therefore, \$255,905.40 in total liquidated damages are due.

Adler Decl. ¶ __ & Ex. __ (Summary Sheet).

Attorney's Fees and Costs

63. The Funds seek to recover attorney's fees and costs pursuant to Sections 502(g)(2) of ERISA, 29 U.S.C. §§1132 (g)(2), and the Trust Agreement. Puccio Decl. Ex. __ (Trust Agreement), at 27; Adler Decl. ¶ __.

64. As litigation is ongoing, if the Funds' motion for summary judgment is granted, the Funds are prepared to supplement their filings to address the attorney's fees and costs expended in this action. Adler Decl. ¶ __.

Audit Request

65. The Company is subject to audit for the period commencing May 25, 2020, with additional contributions and attendant damages potentially due, pending on the audit results. Puccio Decl. ¶ __.

Summary of Amounts Due

66. The table below summarizes the amounts due (excluding attorney's fees and costs) through April 30, 2022:

	Contributions Due	Interest	Liquidated Damages	GRAND TOTAL
Unpaid Contributions Due (Based on Remittance Reports)	\$622,254.08	\$160,269.58	\$176,887.30	
Contributions - Estimated	\$134,178.21	\$2,999.71	\$26,835.64	
Late Paid Contributions (Based on Remittance Reports)	\$0.00	\$16,475.90	\$52,065.38	
Audit 20-0560	\$121.65	\$117.08	\$117.08	
Grand Totals	\$756,553.94	\$179,862.27	\$255,905.40	\$1,192,321.61

Adler Decl. ¶ __ & Ex. __ (Summary Sheet).

Dated: April 19, 2022
New York, New York

Respectfully submitted,

/s/ Michael S. Adler

Michael S. Adler
Cohen, Weiss and Simon LLP
900 Third Avenue, Suite 2100
New York, New York 10022
(212) 563-4100

Attorneys for Plaintiffs